HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. NO. 1558 of 2001
(Old FAFO No. 64/1987)

The New India Insurance Company Ltd. The
New India Assurance Building, 87 Mahatma Gandhi Marg,
Fort Bombay- 400023. **...Appellant**

Vs

1. Ajai Kumar Singh S/o Vijendra Bahadur Singh,
   Resident of Village Kishunpur, Tehsil Kichha,
   District- Nainital.
2. Smt. Vijay Laxmi Singh Wife of Ajai Kumar Singh,
   Resident of Village Kishanpur, Tehsil Kichha,
   District- Nainital. (Claimant- respondent)
3. M/s Agarwal Filling Station, Tikonia, Police Station
   Sighal, District Lakhimpur Kheri, through Sri Janki
   Prasad S/o Ram Narain. **....Respondents**

Sri M.K. Goyal learned counsel for the appellant.
None present for the respondent despite of service.

Dated: - 14-6-2006

Hon'ble B.S. Verma, J.

Heard Sri M.K. Goyal learned counsel for the appellant.

This appeal under Section 110-D of the Motor Vehicles Act, 1939 **(for short the Act)** has been preferred against the Judgment and order dated 23-7-1986 passed by District Judge Nainital in M.A.C.T. Case No. 80 of 1984 Ajai Kumar Singh and another Vs. M/s Agarwal Filling Station and another whereby Rs. 15,000/- along with 10% interest has been awarded by the Claim Tribunal in favour of the claimant against the Insurance Company.

The claim petition for compensation was moved under Section 92A of the Act in respect of the death of Sri Abhijeet Singh in a Motor Accident on 27-1-1984. Both the claimants are the father and mother respectively of the deceased Abhijeet Singh. The opposite party No.3 M/s Agarwal Filling Station

is the registered owner of the offending motor tanker bearing No. USH 75K and the opposite party No. 2 M/s New India Assurance Co. Ltd is insurer of the tanker. The deceased Abhijeet Singh was aged about 6 years and a student at the relevant time.

Brief facts of the case-giving rise to the claim petition are that the deceased Abhijeet Singh was returning from his school in the afternoon on 27-1-1984. As soon as he reached in front of Kichha Sugar Factory at about 3.30 P.M. the offending tanker came from Kichha side on way to Haldwani. Abhijeet Singh was on the extreme left of the road side strip. But the driver of the tanker was rash and negligent and he took a sharp turn and thus over ran Abhijeet Singh. The injuries sustained by Abhijeet Singh in this accident ultimately, resulted in his death while on way to P.H.C. Kichha. It has been alleged that Abhijeet Singh after completing his education would have earned at least Rs. 3000/- per month and that the claimants suffered irreparable loss besides mental shock and agony on account of death of Abhijeet Singh in this accident. Hence, this claim petition was filed.

The opposite party-respondent filed separate written statements on behalf of the owner as well as the insurer company. It was admitted that the tanker was insured on the date of accident and the factum of accident was also admitted although the negligence of the driver of the tanker was denied. It was further admitted rather reluctantly that Abhijeet Singh who sustained injuries in this accident later died.

The Following issues were farmed by the Tribunal:-

(1)Whether Sri Abhijeet Singh died in the alleged accident with Tanker No. USH 75K.

(2) To what amount of compensation, if any are the claimants entitled.

The factum of accident and the injury has already been admitted in the written statement on the basis of the admission of the parties. The Tribunal has decided the issue No.1 in favour of the claimants. So far as Issue No.2 is concerned, the learned Tribunal observed that there is a provision for interim Compensation under Section 92-A of the Act on the principle of “No Fault” in the case of bodily injury in a Motor Accident and the maximum limit has also been fixed at Rs. 15,000/- in the case of death. In the case at hand it was also admitted that the Abhijeet Singh had died in this accident. Therefore, the owner

as well as the insurer Company are liable to pay compensation under this provision. The claimants have also preferred claim petition under Section 110-A of the aforesaid Act. Interim compensation under Section 92-A is liable to be adjusted towards payment of compensation while deciding the main Claim petition finally under Section 110-A of the Act. Considering the fact and circumstances the amount of compensation which the claimants are reasonably entitled to get under Section 92-A of the Act for no fault liability, the issue was decided in favour of the claimants.

Learned counsel for the Insurance Company has vehemently argued that the interest levied on the insurance company cannot be awarded. The argument of the learned counsel of the Insurance Company is that the Tribunal erred in awarding interest @ 10% from the date of claim petition. It was the duty of the insurance company to pay the interim compensation towards no fault liability within reasonable time. The claimants preferred the petition under Section 92-A for interim compensation rightly awarded the interest at the rate of 10% from the date of the institution of the claims petition.

Learend Tribunal has already given the categorically finding that the amount paid as interim compensation shall be adjusted in the final compensation of the claim under Section 110-A of the Act. Hence, I find no irregularity or infirmity in the order passed by the learned Tribunal.

Accordingly, the appeal deserves to be dismissed and is hereby dismissed. No order as to costs.

The amount in deposit with this Court, if any, shall be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants as directed by the learned Tribunal.

(B.S. Verma,J)

Dated: - 14-6-2006

M.K.